

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jonah Goger	Team: Team # 4	CCRB Case #: 200301212	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 02/15/2003 3:30 PM	Location of Incident: c/o 59th Street & 1st Ave., Manhattan.	Precinct: 17	18 Mo. SOL 8/15/2004	EO SOL 8/15/2004	
Date/Time CV Reported Sat, 02/15/2003 5:57 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Sat, 02/15/2003 5:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 James Irving	07499	893195	B/S-END

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 John Fanizzi	07652	903887	B/S-END

Officer(s)	Allegation	Investigator Recommendation
A.DT3 James Irving	Force: Det. James Irving used physical force against § 87(2)(b)	

Synopsis

This complaint stems from the anti-war rally that took place on 2/15/03, at the United Nations Headquarters, which received extensive press coverage. As such the case was deemed sensitive and has been appearing on the agency's sensitive case list.

§ 87(2)(b) called the CCRB on 2/15/03, just hours after the alleged incident, to complain that Det. James Irving of the Bronx Southeast Narcotics District pushed her to the ground during a disturbance at the aforementioned war protest. The complainant wrote down Det. Irving's name and shield number, and the subject readily admitted to being at the location. Too, he recalled the situation described by the complainant, but denied pushing anyone.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on 3/3/03 (encl. 3). She stated that she and her friend § 87(2)(b) attended the war protest together. They knew the locus of the rally was 49th St. and First Ave, so they attempted to get there, from 42nd St. (Grand Central Station), on foot. But most cross-streets were blockaded, and police officers were herding the civilians northbound on Second Ave. Eventually the women were allowed to move east on 78th St., then south again on First Ave.

After crossing under the 59th St. bridge, § 87(2)(b) and § 87(2)(b) found themselves penned in just north of 58th St. by metal, waist-high barricades which traversed the crosswalk on the north side of the 58th St./First Ave. intersection. About six uniformed officers at the intersection were maintaining order and safeguarding the barricades.

Like others, § 87(2)(b) and § 87(2)(b) pushed up close to the barricade in an effort to get through. As more people did likewise, it became increasingly cramped. The protesters began clamoring for release, but the officers ignored them. Finally, a nearby protester was able to separate two of the barricades, and § 87(2)(b) -- holding a sign with an anti-war message -- was involuntarily swept out into the intersection by the force of the pushing crowd. Just as she passed the barricade line, an officer later identified as Det. Irving "ran up to her" from a short distance away, grabbed her by both shoulders and violently pushed her backwards and down, so that § 87(2)(b) fell back on her buttocks and back. There was no substantive injury § 87(2)(b) noted very minor bruises to her buttocks) and no medical treatment afterward.

The officers managed to get almost everyone back inside the pen, including § 87(2)(b) who had risen under her own power. Now back behind her barricade, she could see her sign where she had dropped it. Det. Irving was now standing close to it, so she asked him if "he would mind returning it." He just stared back at her, "pretending he hadn't heard." Eventually he turned his head and, so it appeared, spit purposefully in the direction of the sign.

A short while later, after taking time to definitively note the subject's name and shield number § 87(2)(b) also gleaned Det. John Fanizzi's name and a partial shield number from his uniform), § 87(2)(b) and § 87(2)(b) left the scene by retreating northbound, away from the demonstration.

Results of Investigation

Overview

During the 2/15/03 protest, barricades were erected at most First Avenue Manhattan intersections north of the perimeter of the United Nations Plaza (E. 48th St.) and extending further north beyond the 59th St. Bridge. For the greater part of the afternoon of 2/15/03, thousands of civilians on First Ave., most of whom were trying to migrate south to the rally site proper, were "penned" between barricaded cross streets. At times they were allowed to pass from pen to pen at the discretion of supervising police officers, while at other times the officers acted to prevent such movement.

The demonstration Detail Roster confirmed that both detectives interviewed for this case were assigned to the intersection of 59 St. and First Ave.

Witnesses

§ 87(2)(b) was interviewed on 4/22/03. She recalled being pressed up against the linked barriers at the northern end of the intersection of 59th St. and First Ave., trying to get to the pen immediately south of theirs. There was much anti-war chanting throughout, but no one was yelling at the approximately six police officers situated between the pens. The officers, likewise, were not saying anything to the civilians.

Suddenly a female (white “hippie,” early 20’s, brown hair, wearing bright colors, 5-5, 150 lbs) standing several feet to the left of § 87(2)(b) (who was slightly closer to the woman than § 87(2)(b)) lifted one end of a steel barricade so that it was no longer linked to the one adjacent to it. The woman pushed the barricade out into the intersection and stepped through the gap, heading toward the next pen. Immediately a swarm of people around and behind § 87(2)(b) also began pushing toward the gap, apparently eager to be free of the pen.

§ 87(2)(b) knew this would upset the attendant officers, so she tried to fight against this tide of human traffic, but was only marginally successful. Only seconds passed before she was restrained and pushed back inside the barricade line by an officer who was trying to corral others simultaneously.

§ 87(2)(b) was -- quite involuntarily, or so it appeared -- fully out in the street by this point. Other officers were also attempting to push the “escapees” back inside the break in the barricades. § 87(2)(b) did in fact witness a uniformed male officer push § 87(2)(b) back by the shoulders. She fell or tripped to the ground.

§ 87(2)(b) noticed only that the officer was white, with brown hair (scant details that nonetheless conform with the subject’s physical description. Though Det. Irving noted that his hair was “bld” for blond on his pedigree sheet, his hair is certainly not conclusively blond). Her attention was then diverted, and then next time she was able to look, § 87(2)(b) was on her knees. § 87(2)(b) does not know if she was pushed “down” in that manner, or how she got in that position. She could not be sure if § 87(2)(b) had been grabbed and pushed, or just shoved backwards.

§ 87(2)(b) conceded that she could not honestly say that this force was excessive, given the circumstances.

§ 87(2)(b) indicated that she believed she saw the “hippie” female being apprehended, but a thorough search of all arrests (in both the 17th and 19th pct.’s) on that day revealed no young women arrested at that location at that time (see do not copy file for arrestee index).

Officers

Det. John Fanizzi, also identified through name and (partial) shield number by the complainant, was interviewed at CCRB on 4/8/03, and he readily admitted being present at the aforementioned intersection for much of the afternoon. He was assigned to crowd control along with approximately 15 to 20 other officers. Only one did he know personally: Det. Irving, also assigned to Brooklyn Southeast Narcotics District.

The pen between 59th and 60th Streets was only about half full, but the people inside became increasingly impatient and agitated after a while. They were pushing up against the south barricades (metal, eight to ten feet wide individually, and affixed together to create a wall), demanding to be allowed further south where the speeches were being delivered.

Det. Fanizzi was charged with maintaining order and keeping the intersections clear, so at one point he literally had to wrap his arms around two barricades to keep them fixed together against the pressure of pushing protesters. By his description, the situation began to resemble a “soccer crowd” out of control.

Finally a ranking officer yelled for the barricades to be opened, and the officers complied. The civilians swarmed from one pen to the next further south, but Det. Fanizzi never saw anyone pushed to the ground. He did not recall Det. Irving having any physical interaction with any civilians. He also did not recall any time when the protesters actually broke through before they were permitted to do so. There was no misconduct on the part of any officer that he observed.

Det. James Irving was also interviewed at CCRB on 4/8/03, and he too verified that he was assigned to the intersection in question at the time of occurrence. His memory of the scenario was similar to that of Det. Fanizzi, except that he did recall a “minute or two” when the barricades were temporarily separated by indignant protesters before being re-affixed.

The protesters were desperately trying to separate the barricades so that they could move further south, but orders from “higher-ups” (Det. Irving knew the names of no ranking officers at the scene) were to keep them penned. At one point however, two barricades were indeed separated and several people squeezed through before Det. Irving and other (unknown) officers raced up to reattach them. The civilians who had escaped were allowed to “run off” and were not pursued. No civilians were forced back into the pen once they had gotten out.

When asked specifically about physical contact, Det. Irving claimed he never grabbed or pushed anyone. He also claimed to recall no one speaking or yelling at him specifically, or asking any questions, after the barricades had been re-affixed, though the protesters did continue to yell at the officers in general.

Det. Irving did not remember any sign being on the ground near him. He was not the object of any accusations that he could recall. He was soon switched to monitor vehicular traffic on the cross street (59th), and so he was not responsible for opening the First Avenue pen when the protesters were released through a short time later.

Det. Irving denied all misconduct.

Conclusions and Recommendations

That the four interviewed parties were at the intersection is undisputed, and § 87(2)(b) s identification of Det. Irving seems iron clad. She provided a full last name and shield number, and adamantly and unhaltingly identified him as the subject.

Likewise, the breach of the barricades described by the civilians was witnessed by Det. Irving, the subject, § 87(2)(g)

In PD v. Mandell (OATH index 405/93, 1/26/1993, enc. 1a), Administrative Law Judge Spooner ruled concerning an officer's use of force during a large public gathering: "Since the situation was volatile and all of the officers no doubt feared for their safety, some minor use of force (such as the two-handed pushing described by respondent's witnesses) as a means of crowd control may have been appropriate, even essential."

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: